ADM-9-03 O1:RR:RD:TCR
H309124 AP

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Fixed and Portable Patient Ceiling Lift Systems

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain fixed and portable patient ceiling lift systems that will be installed at a patient's residence or healthcare setting. Based upon the facts presented, CBP has concluded in the final determination that the patient ceiling lift systems would not be products of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b) for purposes of U.S. Government procurement.

DATES: The final determination was issued on June 4, 2021. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

FOR FURTHER INFORMATION CONTACT: Albena Peters, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325-0321.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on June 4, 2021, CBP issued a final determination concerning the country of origin of fixed and portable patient ceiling lift systems for purposes of Title III of the Trade Agreements Act of 1979. This final determination, HQ H309124, was issued at the request of the party-at-interest, under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18). In the final determination, CBP has concluded that,

based upon the facts presented, the fixed and portable patient ceiling lift systems would not be products of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b) for purposes of U.S. Government procurement. Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the *Federal Register* within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the *Federal Register*.

Dated: June 4, 2021.

Joanne R. Stump,
Acting Executive Director,
Regulations and Rulings,
Office of Trade.

HQ H309124

June 4, 2021

OT:RR:CTF:VS H309124 AP

CATEGORY: Origin

Luis F. Arandia, Jr.
Polsinelli PC
2950 N. Harwood St., Ste. 2100
Dallas, TX 75201

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, CBP Regulations; Country of Origin of Fixed and Portable Patient Ceiling Lift Systems

Dear Mr. Arandia:

This is in response to your February 4, 2020 request,[1] on behalf of Handicare USA, for a final determination concerning the country of origin of patient ceiling lift systems. This request is being sought because your client wants to confirm eligibility of the merchandise for U.S. government procurement purposes under Title III of the Trade Agreements Act of 1979 ("TAA"), as amended (19 U.S.C. 2511 *et seq.*). Handicare USA is a party-at-interest within the meaning of 19 C.F.R. 177.22(d)(1) and 177.23(a).

FACTS:

Handicare USA is the U.S. subsidiary of the Handicare Group AB based in Stockholm, Sweden, which manufactures patient ceiling lift systems.[2] Handicare USA's North American headquarters and manufacturing facility is in St. Louis, Missouri with local offices across the U.S. and Canada. These offices are full-service centers that include inventory, customer service, technical support, sales, and a showroom.

You describe the subject patient ceiling lift systems as consisting of a ceiling lift unit mounted on a XY rail system. Each ceiling lift system is assembled and installed at a patient's residence or healthcare setting. The ceiling systems can be fixed (model C-625) or portable (model P-440). The fixed lift remains on the same track system and cannot be moved to another room. For the portable system, the lift is designed to be taken down from the track system and moved to a different track system in another room.

The major components of the fixed and portable ceiling lift systems are the regular and super tracks, charging station subassembly, gantry subassembly, ceiling lift motor subassembly, and patient carry bar subassembly. The regular and super tracks[3] of Canadian or Mexican origin are sub-components of the entire system and are imported with no additional assembly. The charging station of U.S. origin consists of a charging battery, housing, and cables. The gantry of

[1] You submitted a supplemental letter on February 26, 2020.
[2] *See* Handicare, Ceiling Lifts, https://www.handicareusa.com/product-category/homecare/ceiling-lifts/ (last visited May 17, 2021).
[3] The regular track is the standard rail for most applications while the super track is a heavier rail for longer free spans between attachment points.

U.S. origin consists of trolley wheels, track brackets, fasteners, washers, and spacers, and may include a charger block. The carry bar of Chinese or Canadian origin is fitted with bull horn or spring latch connectors, and narrow or wide bars. You describe the ceiling lift motor subassembly as "the heart" of the entire lift system and as U.S.-originating. It consists of the ceiling lift motor, circuit board, and housing. The portable ceiling lift motor subassembly (model P-440) has a U.S. originating motor and circuit board. The fixed ceiling lift motor subassembly (model C-625) has a U.K.-originating motor and U.S.-originating board.

The hardware components are the above-ceiling attachments that comprise the mounting for the patient lift system and include the perpendicular brace strut channel (U.S. or Taiwanese origin), bracket (Canadian or Mexican origin), end pin (Chinese origin), end cap (Canadian or Mexican origin), strut channel (U.S. or Taiwanese origin), and bolt, lock washer, threaded rod, hex nut, fitting, lock washer, channel nut, coupler nut, seismic wedge anchor, and square washer (originating from various countries including China).

The charging station, gantry, and ceiling lift motor subassemblies occurs in Handicare USA's manufacturing facility in St. Louis. At the customer installation site, Handicare USA modifies the tracks and assembles them with the charging station, gantry, ceiling lift motor, and carry bar subassemblies into the patient ceiling lift system. The installation process involves measuring and laying out where the tracks and the attachment points to concrete deck and ceiling brackets should go; installing the structure and the parallel tracks; installing the traversing track, trolley and lift; and testing and verification. The installation includes machine processes such as cutting struts using a band saw, cutting a threaded rod, and drilling into a ceiling.

ISSUE:

What is the country of origin of the subject patient lift systems for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

U.S. Customs and Border Protection ("CBP") issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 C.F.R. 177.21-177.31, which implements Title III of the TAA, as amended (19 U.S.C. 2511-2518).

CBP's authority to issue advisory rulings and final determinations is set forth in 19 U.S.C. 2515(b)(1), which states:

> For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 2518(4)(B) of this title, an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title.

The rule of origin set forth under 19 U.S.C. 2518(4)(B) states:

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another

country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 C.F.R. 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 C.F.R. 25.403(c)(1).

The Federal Acquisition Regulations, 48 C.F.R. 25.003, define "U.S.-made end product" as:

> … an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

Section 25.003 defines "designated country end product" as:

> a WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

Section 25.003 defines "WTO GPA country end product" as an article that:

> (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
>
> (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Canada and the U.K. are WTO GPA countries. China and Mexico are not.

You advise that the lift motor, charging station, and gantry are of U.S. origin and are sub-assembled in the U.S. The key components of the lift motor, which is the most important subassembly characterized as "the heart" of the patient lift systems, are the motor and circuit board. The motor is of U.S. (portable lift) or U.K. origin (fixed lift), and the board is of U.S. origin (both fixed and portable lifts). The final assembly in the U.S. fully integrates the subassemblies, the tracks, and the above-ceiling attachments. The U.S. installation involves cutting struts using a band saw and cutting a threaded rod. The U.S. operations as described are complex and meaningful requiring significant skill, technical expertise, and quality control. As a result of the U.S. operations, the subassemblies are substantially transformed to produce the fully functional and operational fixed and portable patient lift systems.

Accordingly, the instant fixed and portable patient lift systems would not be products of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b)(1). As to whether

they qualify as "U.S.-made end product," we encourage you to review the court decision in *Acetris Health, LLC v. United States*, 949 F.3d 719 (Fed. Cir. 2020), and to consult with the relevant government procuring agency.

HOLDING:

The subject fixed and portable patient lift systems would not be products of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b)(1). You should consult with the relevant government procuring agency to determine whether the lifts qualify as "U.S.-made end product" for purposes of the Federal Acquisition Regulations implementing the TAA.

Notice of this final determination will be given in the *Federal Register*, as required by 19 C.F.R. 177.29. Any party-at-interest other than the party which requested this final determination may request pursuant to 19 C.F.R. 177.31 that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. 177.30, any party-at-interest may, within 30 days of publication of the *Federal Register* Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Joanne R. Stump
Acting Executive Director
Regulations and Rulings
Office of Trade

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